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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 001839

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SUBJECT: UNHCR AND ICRC ON MEK: YOU TOOK THEM, YOU OWN THEM

Classified By: Ambassador Ryan C. Crocker for reasons 1.4 (b) and (d).

¶1. (C/REL MNF-I) SUMMARY: On May 26, a MNF-I/U.S. Embassy delegation consulted with ICRC and UNHCR representatives in Amman on the future of the Mujahedin-e Khalq (MeK) members who were granted 'protected persons' status by the United States in 2004 and currently reside in Diyala province under Coalition protection, as well as of the defectors from the MEK. END SUMMARY.

ICRC: Article III Relevant, Not "Protected Persons"

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¶2. (C/REL MNF-I) The ICRC said "protected persons" status under the Fourth Geneva Convention was not applicable to the future of the MEK, arguing that the USG's responsibilities with regard to the MEK post-June 2004 are derived from Common Article III of the Geneva Conventions and customary international humanitarian law. The ICRC said that because the MEK, as well as the defectors, are currently under MNF-I's "effective control" the US has an obligation to protect them from certain types of risks.

ICRC: MEK Transfer to Iraq Constitutes Violation

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¶3. (C/REL MNF-I) When asked if the USG could end our Article III obligation by transferring the MEK to the government of Iraq, the ICRC said that the U.S. could not do so en masse without violating the principle of non-refoulement which, according to the ICRC, precludes a State from transferring persons within its control to another State if a real risk exists that they may face arbitrary deprivation of life, torture or other form of ill-treatment. (NOTE: The USG does not believe that it has legal non-refoulement obligations with regard to the MEK, although as a policy matter the USG would obtain diplomatic assurances of humane treatment prior to transferring the MEK to another State. END NOTE). The ICRC said the GOI is neither capable nor willing to take on the responsibility of ensuring the population is physically protected and treated humanely.

¶4. (C/REL MNF-I) The ICRC said any such transfer would be a violation of the principle of non-refoulement -- even if the GOI provided diplomatic assurances that it would protect and uphold the human rights of the MEK and would comply with the international policy of non-refoulement. The ICRC argued that, according to un-named "international human rights treaty-monitoring organizations", the weight given to diplomatic assurances depends upon whether a state has a history of systematic torture and that if it does then no weight can be given to the assurances. The ICRC noted evidence of abuse by elements of the Iraqi government, adding that the GOI cannot currently protect any of its population, let alone the MEK - an organization despised by many Iraqis

for its alliance with Saddam Hussein. The ICRC also noted that Iraq is not party to the Convention Against Torture, implying that as a result the GOI had even less incentive to ensure the safety and humane treatment of the MEK.

#### ICRC: On Iraqi Security Forces or Others Protecting MEK

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¶15. (C/REL MNF-I) The ICRC said they would not oppose a Coalition proposal to involve Iraqi forces in providing some security - perhaps an outer ring - to the MEK camp as long as the USG remained responsible for the group's protection. The ICRC also did not see a problem with the USG hiring a private security force to protect the MEK camp, with the understanding that this would not relieve the USG for its legal responsibility for the group's protection.

#### ICRC: Forceable Repatriation and Well-Founded Fear

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¶16. (C/REL MNF-I) According to ICRC, the USG may not forcibly repatriate MEK members to a third country, including Iran, if the person to be repatriated can establish a well-founded case of fear that doing so would subject them to arbitrary deprivation of life, torture or other forms of ill-treatment, persecution, or manifestly unfair judicial proceedings. The ICRC said that to do so would violate the principle of non-refoulement.

#### ICRC: Determining When Involuntary Repatriation is OK

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¶17. (C/REL MNF-I) The ICRC said that the US could meet the standards of the principle of non-refoulement by establishing

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certain procedures to determine whether an individual's expressed fears were well-founded or not. The ICRC recommended that the USG establish an independent panel to interview each individual MEK member who expressed fear. The panel could be comprised of USG personnel, but should not be exclusively made up of MNF-I personnel. The ICRC said that those MEK members whose cases would be reviewed by the panel must have the right to make submissions on their behalf. The ICRC also said that the MEK members appearing before the panel should have access to legal counsel and should have a right to some form of an appeals process. The panel would ultimately determine if the individual MEK member had a well-founded fear of torture or other forms of ill-treatment, persecution, arbitrary deprivation of life, or manifestly unfair judicial proceedings. In the ICRC's view, MEK members determined not to have such well-founded fears could be involuntarily repatriated to Iran - or transferred to GOI responsibility. Due to its mandate, however, the ICRC said it would not assist in any involuntary repatriation (NOTE: The 176 former MEK members with UNHCR refugee status would not be included in this interview process as the UNHCR has already determined that they have credible fears of persecution under the 1951 Convention relating to the Status of Refugees. END NOTE).

#### ICRC Current and Planned Role

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¶18. (C/REL MNF-I) The ICRC said it would continue its current efforts with regard to the MEK situation in Iraq. The ICRC said it would remain involved in facilitating communication between families in Iran and the MEK camp and in supporting voluntary repatriations of MEK members from Iraq to Iran or other third countries. The ICRC noted it is working with its security personnel to determine whether it would be possible to visit the MEK camp in Ashraf to evaluate the overall status and treatment of the population. (NOTE: ICRC has only visited Ashraf once in 2004. Security issues have kept them from any follow on trips. In order to maintain its neutrality and independence, the ICRC has thus far

consistently refused protection and security within Iraq offered by the Coalition. END NOTE). If such a ICRC trip is allowed, they would also be willing to advocate that MEK members voluntarily repatriate to Iran if they could not develop a strong case that their return would result in torture or other ill treatment. The ICRC also said that if the US decides to set up the proposed independent panel to evaluate whether or not a claim of fear is well-founded, they could assist in developing the interview criteria and questionnaire.

UNHCR: Role Limited to MEK Defectors and UNHCR Refugees  
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¶9. (C/REL MNF-I) UNHCR said its role with the MEK camp in Ashraf is limited to defectors and refugees located in the Ashraf Refugee Camp (ARC). Over the past few years, UNHCR has conducted refugee status determination (RSD) interviews on most of the defectors who were interested in refugee status. The UNHCR has also tried, unsuccessfully, to find third country placement for nearly all MEK defectors who have been granted refugee status. UNHCR stressed that if the USG were to take some of these refugees, other countries might also be willing to open their doors to the refugees. Embassy personnel explained that the Department of Homeland Security had ruled that the refugees were ineligible to enter the U.S. due to their former association with a listed Foreign Terrorist Organization.

¶10. (C/REL MNF-I) Two hundred and four (204) defectors from the active MEK members are currently living in a separate camp, called the Ashraf Refugee Camp (ARC). One hundred and seventy-six (176) have been granted refugee status by UNHCR, while four (4) have had their applications for refugee status denied (and are waiting to appeal the decision). Another twenty-four (24) are still waiting for their RSD interviews. UNHCR welcomed MNF-I's offer to facilitate conducting the remaining RSDs in person, rather than through video-conferences. A UNHCR visit to the ARC, the defector camp, could also serve to inform the refugees that their prospects of third country resettlement appear slim.

UNHCR: On Movement of Defectors to Another Iraqi Site  
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¶11. (C/REL MNF-I) The UNHCR said it would not oppose a Coalition proposal to move the MEK defectors and refugees to a new location within Iraq, as long as the refugees were provided adequate security and maintenance. The UNHCR also

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noted the GOI, as the host government, would need to approve any relocation plan. As for moving the population outside of the country, this would be problematic. The USG would need to find an appropriate host country for the camp, and this was improbable given that countries have not even been willing to accept the small number of refugees who have actually defected from the MEK.

UNHCR: On Protection of MEK Defectors and Refugees  
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¶12. (C/REL MNF-I) The UNHCR said that it opposes transferring security of the MEK refugees/defectors to the GOI. UNHCR officials pointed out that the GOI's track record for protecting Sudanese and Palestinian refugees was poor. Similar to the arguments of the ICRC, the UNHCR argued the GOI could not be trusted to ensure the security of the refugees, without some form of credible assurances or assessments.

¶13. (C/REL MNF-I) UNHCR said it would not object to the transfer of security for the MEK defectors and refugees to another country's forces, UN forces, or a private firm, as long as the refugees would be safe. The UNHCR cautioned that the host government would need to approve a change in force

protection. The UNHCR further stated that it would not influence or play a role in soliciting a new force for the population.

UNHCR: On Life Support for MEK Defectors and Refugees

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¶14. (C/REL MNF-I) The UNHCR said it might be able to provide for the care and maintenance at the Ashraf Refugee Camp, but quickly made clear it could not guarantee it would be able to do so. The UNHCR said that it could only take on this mission if a suitable implementing NGO were available and/or if its own staffing within Iraq was increased. The UNHCR made clear, however, that the USG would remain responsible for the security of the camp.

UNHCR: USG Should Allow Refugees Leave Ashraf Voluntarily

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¶15. (C/REL MNF-I) The UNHCR, supported by the ICRC, said that due to international law guaranteeing freedom of movement, that the USG should not prevent MEK defectors or refugees from voluntarily leaving Ashraf, as long as they were fully informed of the risks outside the camp. Given this position, MNF-I agreed to consider changing its current practice of disallowing unaccompanied departures - a policy it had instituted in order to protect refugees from the various threats they face. MNF-I estimated that as many as 30-40 of the refugees might decide to simply leave the refugee camp if/when its gates are opened. The ICRC cautioned that refugees should not be coerced into leaving the facility.

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